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11 **UNITED STATES BANKRUPTCY COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION**

14 In re:

15 THE ROMAN CATHOLIC ARCHBISHOP OF
16 SAN FRANCISCO,

17 Debtor and Debtor in Possession.

18 Bankruptcy Case
19 No. 23-30564

Chapter 11

Date: September 14, 2023

Time: 1:30 p.m.

Place: Via ZoomGov

Judge: Hon. Dennis Montali

20 **OBJECTION OF THE UNITED STATES TRUSTEE TO FINAL
21 APPROVAL OF DEBTOR'S MOTION FOR CONTINUED USE OF EXISTING
22 CASH MANAGEMENT SYSTEM [ECF No. 9]**

23 Tracy Hope Davis, United States Trustee for Region 17 (the "UST"), hereby files this

24 objection to final approval of the *Debtor's Emergency Motion for Interim and Final Orders*

25 *(1) Authorizing Continued Use of Existing Cash Management System, Operational Bank*

26 *Accounts and Related Investment Accounts; (2) Authorizing Maintenance of Existing Business*

27 *Forms, (3) Excusing Compliance with Section 345(b); (4) Authorizing Continued Use of Current*

1 *Investment Policy; and (5) Scheduling a Final Hearing* (ECF No. 9) (the “Cash Management
2 Motion”). In support of her Objection, the UST respectfully represents as follows:

3 **I. INTRODUCTION**

4 1. The Debtor has not met its burden of demonstrating cause to waive the
5 collateralization requirements of 11 U.S.C. § 345(b). Because the Debtor has more than \$160
6 million invested at BofA Securities and U.S. Bank, a waiver of Section 345(b)’s requirements
7 would pose a risk to the estate. Thus, the Cash Management Motion should be denied.

8 **II. STATEMENT OF FACTS**

9 **General Case Background**

10 2. On August 21, 2023, the Debtor commenced the above-captioned case under
11 Chapter 11 of the Bankruptcy Code. *See* ECF No. 1. The Debtor is currently a debtor in
12 possession under Sections 1107 and 1108 of the Bankruptcy Code.

13 3. The Debtor has not yet filed the required Schedules and Statements, including
14 Schedule A/B, Schedule D, Schedule E/F, and the Statement of Financial Affairs. The Debtor’s
15 deadline to file these documents is September 21, 2023. *See* ECF No. 56.

16 4. The meeting of creditors under 11 U.S.C. § 341 is scheduled for September 28,
17 2023. *See* ECF No. 55.

18 5. On September 1, 2023, the UST appointed the official committee of unsecured
19 creditors. *See* ECF No. 58.

20 6. According to the first day declaration of Joseph J. Passarello (ECF No. 14) (the
21 “First Day Declaration”), the Debtor was incorporated as a California corporation sole in 1854
22 and “consists of approximately 442,000 Catholics in the counties of San Francisco, San Mateo,
23 and Marin covering approximately 2,325 square miles.” *See* First Day Declaration, at ¶ 14.
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1 There are 88 parishes within the archdiocese. *Id.* The parishes are “unincorporated associations”
2 under California law. *Id.*, at ¶ 18.

3 7. In 2007, the Debtor created two support corporations - known as “CASC” and
4 “RPSC” - to “own and maintain certain capital assets and real properties so that the civil
5 structure of asset ownership conforms closely with Canon Law and historical practice, and to
6 support the mission of Parishes, Schools and Cemeteries.” *See* First Day Declaration, at ¶¶ 21-
7 28.

8 8. According to the First Day Declaration, there are “approximately 537 separate,
9 active lawsuits pending against the Debtor filed by plaintiffs alleging sexual abuse by clergy or
10 others associated with the Debtor.” *See* First Day Declaration, at ¶ 53.
11

12 **The Cash Management Motion**

13 9. As part of the Cash Management Motion, the Debtor seeks authorization to (i)
14 continue to use its existing cash management system, (ii) continue to use its pre-petition
15 accounts and business forms, (iii) continue its investment policies without posting bonds
16 pursuant to 11 U.S.C. § 345(b), and (iv) continue using its credit cards. *See* Cash Management
17 Motion, at ¶ 9.
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19 10. According to the Cash Management Motion and Exhibit 2 thereto, it appears
20 that the Debtor maintains thirteen (13) bank accounts and four (4) investment accounts. *See*
21 ECF No. 9, at p. 35 of 35 (“Exhibit 2”); Cash Management Motion, at ¶ 13 & n.5.
22 Specifically, the Debtor holds:
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- 25 a. six (6) bank accounts at Bank of America. The combined balance in these
26 accounts is approximately \$11,000,000;
- 27 b. one (1) “Imprest” bank account at Bank of America (#4577) with a balance
28 of \$14,946;

- c. one (1) bank account at the Bank of San Francisco (#1486) with a balance of \$246,041 (the “Bank of San Francisco Account”);
- d. two (2) bank accounts at First Republic Bank (“FRB”). The FRB account ending with digits 1534 has a balance of \$257,115. The Debtor intends to close the FRB account ending with the digits 9117 (the “FRB 9117 Account”);
- e. one (1) brokerage account at FRB (#0589) with a balance of \$15,602 (the “FRB Brokerage Account”). The FRB Brokerage Account is used to liquidate donated securities;
- f. one (1) “Imprest” bank account at Bridge Bank (#8561) with a balance of \$48,397;
- g. one (1) “Imprest” bank account at California Bank & Trust (“CB&T”) (#9479) with a balance of \$96,606;
- h. one (1) bank account at City National Bank (#9001) with a balance of \$75,816;
- i. one (1) investment account at Segal Bryant (#8815). The Debtor intends to close this account;
- j. one (1) investment pool account(s) at U.S. Bank with a balance of \$104,737,665 (the “U.S. Bank Investment Account”). The Cash Management Motion does not disclose the holdings in this account;¹ and
- k. one (1) investment account at BofA Securities (#9371) with a balance of \$57,789,941 (the “BofA Investment Account”). The funds in this account “are invested in BlackRock Liquidity Funds Fed Fund Portfolio Institutional Class, which is a money market mutual fund that currently yields approximately 5.2% of interest per year.”

See Cash Management Motion, at ¶¶ 11, 13, 15, 26 & n. 5; Exhibit 2.

11. Bank of America, Bridge Bank, City National Bank, and U.S. Bank are authorized depositories in the Northern District of California. Moreover, CB&T is a division of Zions Bancorporation, N.A., which is also an authorized depository in the Northern District

¹ The UST has requested additional information about the U.S. Bank Investment Account, specifically (i) copies of the most recent statement, and (ii) documentation regarding account holdings. The UST has not yet received this information from the Debtor. See Declaration of Kristin A. McAbee filed herewith, at ¶¶ 4-5.

1 of California. Similarly, after it failed, FRB was acquired by JPMorgan Chase, which is also
2 an authorized depository in the Northern District of California. *See*
3 <https://www.justice.gov/ust-regions-r17/region-17-general-information#ch11>; *see also* Cash
4 Management Motion, at ¶¶ 10, 31.

5 12. Bank of San Francisco, BofA Securities, Inc., and Segal Bryant are not
6 authorized depositories in the Northern District of California. *See* <https://www.justice.gov/ust-regions-r17/region-17-general-information#ch11>; *see also* Cash Management Motion, at ¶¶ 10,
7 31.

8 13. According to the Cash Management Motion, the Debtor “primarily uses its Cash
9 Management System to, among other things, receive (i) unrestricted gifts, bequests, and
10 collections; (ii) restricted donations including proceeds of the Archdiocesan Annual Appeal ...
11 ; (iii) payments for various insurance coverages paid by RCASF on behalf of other non-
12 diocesan entities; (iv) commercial rental income; (v) fees for administrative services to certain
13 other Non-Debtor Catholic Entities; (vi) investment income; and (vii) non-Chancery payroll
14 funding on a pass-through basis.” *See* Cash Management Motion, at ¶ 13.
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16 14. On August 23, 2023, the UST filed her Omnibus Objection to Debtor’s First
17 Day Motions and Reservation of Rights. *See* ECF No. 26. In the Omnibus Objection, the UST
18 sought compliance with Section 345 to protect creditors against the loss of estate funds
19 deposited or invested by the Debtor.
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21 15. On August 25, 2023, the Court approved the Cash Management Motion on an
22 interim basis. *See* ECF No. 41 (the “Interim Order”). Among other things, the Interim Order
23 provides that the Debtor “shall use reasonable efforts” to accomplish the following acts within
24 15 days of entry of the Interim Order: (i) close its Segal Bryant investment account; (ii) close
25

1 the FRB 9117 Account; and (iii) have “each of Bank of America, City National Bank, Bridge
2 Bank, FRB, and CB&T designate the Debtor’s respective bank accounts at these institutions as
3 ‘Debtor in Possession’ accounts.” *Id.*, at ¶ 10.

4 16. The Interim Order further requires the Debtor to (i) regularly sweep funds from
5 the FRB Brokerage Account into a debtor in possession account at an authorized depository for
6 the Northern District of California, and (ii) sweep any funds in excess of \$250,000 on a daily
7 basis from the Bank of San Francisco Account into a debtor in possession account at an
8 authorized depository for the Northern District of California. *Id.*, at ¶ 11.

9

10 III. OBJECTION

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12 A. **Bankruptcy Code Section 345**

13 17. Bankruptcy Code Section 345(b) protects creditors against the loss of estate
14 funds deposited or invested by debtors. *See In re Columbia Gas Systems Inc.*, 33 F.3d 294,
15 301 (3d Cir. 1994) (“Ensuring the safety of the bankruptcy funds has been the foremost goal.”);
16 *In re CWNevada LLC*, 602 B.R. 717, 744 (Bankr. D. Nev. 2019) (“[t]hose requirements are
17 designed to ensure the safety of the funds held by a trustee or debtor in possession as a
18 fiduciary of a bankruptcy estate”).

19 18. Specifically, Section 345(b) provides that money of the estate shall be insured
20 or guaranteed by the United States or by a department, agency or instrumentality of the United
21 States or backed by the full faith and credit of the United States. Money of the estate may also
22 be deposited in an entity that has posted a bond in favor of the United States or has deposited
23 securities with the Federal Reserve Bank.

24 19. A court may waive the requirements of Section 345 upon a showing of “cause.”
25 *See 11 U.S.C. § 345(b)*. Thus, the Court may modify the requirements of Section 345(b) for
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1 “‘just cause’ where strict compliance might ‘work to *needlessly handcuff* larger, more
2 sophisticated debtors.’” *See In re Ditech Holding Corp.*, 605 B.R. 10, 22 (Bankr. S.D.N.Y.
3 2019) (emphasis added).

4 20. To ensure compliance with Section 345(b), the UST has implemented
5 guidelines for debtors in possession regarding bank accounts (the “UST Guidelines”). Among
6 other things, the UST Guidelines require debtors in possession to close their pre-petition bank
7 accounts and provide proof of the establishment of debtor in possession account(s) at an
8 authorized depository. *See United States Trustee Chapter 11 Operating and Reporting*
9 *Guidelines for Debtors in Possession* (Region 17), at § 3, available at
10 <https://www.justice.gov/ust-regions-r17/region-17-general-information#ch11>.²

11 21. Authorized depositories have agreed to maintain collateral, unless an order of
12 the bankruptcy court provides otherwise, in an amount of no less than 115 percent of the
13 aggregate bankruptcy funds on deposit in each bankruptcy estate that exceeds the FDIC
14 insurance limit. *See United States Trustee Program Policy and Practices Manual*, Volume 7,
15 “Banking and Bonding,” (the “UST Manual”), §§ 7-1.1 and 7-1.2.1, at pp. 1-2, available at
16 <https://www.justice.gov/ust/united-states-trustee-program-policy-and-practices-manual>.
17 Authorized depositories have also agreed to make periodic reports so that the UST can monitor
18 compliance. *See UST Manual*, § 7-1.3.2, at p. 5.

25 2 The UST is mindful that some courts have concluded that guidelines established by the
26 UST do not have the force and effect of law. *See, e.g., In re Young*, 205 B.R. 894, 897 (Bankr. W.D.
27 Tenn. 1997); *In re Lani Bird, Inc.*, 113 B.R. 672, 673 (Bankr. D. Hawaii 1990); *In re Gold Standard*
28 *Baking, Inc.*, 179 B.R. 98, 105-06 (Bankr. N.D. Ill. 1995); *In re Johnson*, 106 B.R. 623, 624-25 (Bankr.
D. Neb. 1989). As a result, “if the court is to require debtors to comply with particular provisions of the
U.S.T.’s Guidelines, it must be for a reason independent of the Guidelines themselves.” *Johnson*, 106
B.R. at 624.

1 **B. The Debtor Has Not Demonstrated Cause for a Waiver of Section 345(b).**

2 22. As noted above, a Court may waive the requirements of Section 345(b) for
3 "cause." In determining whether cause exists under 11 U.S.C. § 345(b), courts have examined
4 the totality of the circumstances. *See In re Serv. Merch. Co., Inc.*, 240 B.R. 894, 896 (Bankr.
5 M.D. Tenn. 1999); *In re Ditech Holding Corp.*, 605 B.R. at 17. As part of this analysis, courts
6 have considered the following factors:

- 8 1. The sophistication of the debtor's business;
- 9 2. The size of the debtor's business operations;
- 10 3. The amount of investments involved;
- 11 4. The bank ratings (Moody's and Standard and Poor) of the financial
12 institutions where debtor-in-possession funds are held;
- 13 5. The complexity of the case;
- 14 6. The safeguards in place within the debtor's own business of insuring the
15 safety of the funds;
- 16 7. The debtor's ability to reorganize in the face of a failure of one or more
17 of the financial institutions;
- 18 8. The benefit to the debtor;
- 19 9. The harm, if any, to the estate; and
- 20 10. The reasonableness of the debtor's request for relief from § 345(b)
21 requirements in light of the overall circumstances of the case.

22 *See In re Serv. Merch. Co., Inc.*, 240 B.R. at 896.³

23 23. The Debtor has not addressed some of the factors identified by the *Serv. Merch.*
24 court, including most importantly, the Debtor's ability to reorganize if a financial institution

27 3 The Debtor cited the *Serv. Merch.* case on page 25 of 35 of the Cash Management
28 Motion.

1 holding the Debtor's funds fails. Given the size of the investments at U.S. Bank and BofA
2 Securities, which total approximately \$160 million or approximately 90 percent of the Debtor's
3 funds, there appears to be a significant risk to the estate.⁴

4 24. Further, while the Debtor asserts that closing the accounts would be
5 burdensome and may cause the Debtor to "miss[out] on earning approximately \$250,000 a
6 month in interest" (Cash Management Motion, a ¶ 58), the Debtor has not indicated that
7 liquidating the accounts would generate any tax consequences.

8 25. Accordingly, the UST objects to the Cash Management Motion and the entry of
9 a final Order waiving the requirements of Section 345 because the Debtor has failed to provide
10 sufficient evidence that supports a finding that cause exists for this waiver.

11 26. While the Debtor suggests that funds in one or more of the accounts may or
12 may not be property of the estate, the overriding concern of the UST is that, should a failure
13 contemplated by Section 345 occur resulting in the loss of funds in the accounts, the Debtor
14 would remain liable. In contrast, by virtue of the collateralization and reporting requirements
15 imposed on authorized depositories, compliance with the UST Guidelines will ensure
16 compliance with the requirements of 11 U.S.C. § 345(b). These requirements would not
17 "needlessly handcuff" the Debtor, but rather protect estate funds as Congress envisioned. *Cf.*
18

19 ⁴ The Debtor's reliance on 28 U.S.C. § 959(b), *In re Diocese of Buffalo*, N.Y., 621 B.R. 91
20 (Bankr. W.D.N.Y. 2020) and California's Uniform Prudent Management of Institutional Funds Act
21 ("UPMIFA") may be misplaced. See Cash Management Motion, at ¶¶ 56-67. The UPMIFA provides
22 that the manager of an institutional fund must consider, *inter alia*, the "needs of the institution and the
23 fund to make distributions and to *preserve capital*." See Cal. Prob. Code § 18503 (emphasis added).
24 Here, the Debtor has more than \$160 million invested in two investment accounts. The invested amount
25 in the *Diocese of Buffalo* case was much less, approximately \$21.8 million. 621 B.R. at 92. The
26 increased risk posed by the Debtor's waiver request suggests that the holding in *In re Ditech Holding*
27 *Corp.* may be more on point. 605 B.R. at 21 (requiring debtors to bring accounts into compliance with
28 Section 345(b), where accounts had daily aggregate deposits of \$95 million and "even a minor disruption
to their access to the funds ... likely would have dire consequences to their business operations and their
ability to reorganize under chapter 11").

1 *In re Ditech Holding Corp.*, 605 B.R. at 22 (requiring debtors to bring accounts into
2 compliance with Section 345(b)).

3 27. To the extent the Court is inclined to approve the Cash Management Motion,
4 such relief should be limited to the accounts specially identified in Paragraph 13 of the Cash
5 Management Motion. Moreover, the final Order should:

- 6 a. require the Debtor to close the BofA Investment Account and the U.S. Bank
7 Investment Account, or bring the accounts into compliance with Section
8 345, and provide proof of same to the UST;
- 9 b. require the Debtor to close the Segal Bryant investment account and the
10 FRB 9117 Account and provide proof of same to the UST;
- 11 c. require the Debtor to have its bank accounts at Bank of America, Bridge
12 Bank, City National Bank, CB&T, and FRB designated as “Debtor in
13 Possession” accounts by the institutions and provide proof of same to the
UST;
- 14 d. require the Debtor to institute a system to regularly “sweep” the funds from
15 the FRB Brokerage Account into a debtor in possession account at an
authorized depository for the Northern District of California;
- 16 e. require the Debtor to institute a system to “sweep” any funds in excess of
17 \$250,000 from the Bank of San Francisco Account on a daily basis into a
debtor in possession account at an authorized depository for the Northern
District of California; and
- 18 f. prohibit the Debtor from opening new accounts unless such accounts are
19 debtor in possession accounts at authorized depositories for the Northern
District of California.

20 28. With respect to the eight (8) “Additional Bank Accounts” at Bank of America
21 identified in the Debtor’s supplement to the Cash Management Motion (ECF No. 22) (the
22 “Supplement”), the Debtor has represented that such accounts “are being used by four High
23 Schools [and] do not contain funds of the Debtor, and the Debtor does not use or control the
24 operation of the Additional Bank Accounts.” *See* Supplement, at ¶¶ 1-2.
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1 29. Based on this representation, the UST does not oppose the Debtor's request for
2 continued use of the Additional Bank Accounts "without need to designate such accounts as
3 debtor in possession accounts or otherwise complying with the requirements of Bankruptcy
4 Code section 345(b)." *See* Supplement, at ¶ 2. The UST reserves all rights with respect to the
5 Additional Bank Accounts, including to seek compliance with Section 345, if the Debtor's
6 representations about the accounts prove inaccurate.
7

8 **IV. CONCLUSION**

9 30. Based on the foregoing, the UST respectfully requests that the Court (i) sustain
10 the Objection, and (ii) deny the Cash Management Motion.

11 Dated: September 7, 2023

12 TRACY HOPE DAVIS
13 UNITED STATES TRUSTEE

14 By:/s/ Jason Blumberg _____
15 Jason Blumberg
16 Trial Attorney for the United States Trustee